

JUDGMENT OF THE COURT (Third Chamber)

4 March 2010*

In Case C-221/08,

ACTION under Article 226 EC for failure to fulfil obligations, brought on 22 May 2008,

European Commission, represented by R. Lyal and W. Mölls, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Ireland, represented by D. O'Hagan, acting as Agent, assisted by G. Hogan SC, with an address for service in Luxembourg,

defendant,

* Language of the case: English.

THE COURT (Third Chamber),

composed of J.N. Cunha Rodrigues, President of the Second Chamber, acting for the President of the Third Chamber, P. Lindh, A. Rosas, U. Löhmus and A. Arabadjiev (Rapporteur), Judges,

Advocate General: J. Kokott,
Registrar: R. Şereş, Administrator,

having regard to the written procedure and further to the hearing on 18 June 2009,

after hearing the Opinion of the Advocate General at the sitting on 22 October 2009,

gives the following

Judgment

¹ By its action, the Commission of the European Communities requests the Court to declare:

— that by imposing minimum and maximum retail prices for cigarettes, Ireland has failed to comply with its obligations under Article 9(1) of Council Directive

95/59/EC of 27 November 1995 on taxes other than turnover taxes which affect the consumption of manufactured tobacco (OJ 1995 L 291, p. 40), as amended by Council Directive 2002/10/EC of 12 February 2002 (OJ 2002 L 46, p. 26) ('Directive 95/59'); and

- that by failing to provide the information necessary in order to enable the Commission to fulfil its task of monitoring compliance with Directive 95/59, Ireland has failed to comply with its obligations under Article 10 EC.

Legal framework

Community legislation

- 2 Recitals 2, 3 and 7 in the preamble to Directive 95/59 read as follows:

'(2) Whereas the objective of the [EC] Treaty is to establish an economic union within which there is healthy competition and whose characteristics are similar to those of a domestic market; and, as regards manufactured tobacco, achievement of this aim presupposes that the application in the Member States of taxes affecting the consumption of products in this sector does not distort conditions of competition and does not impede their free movement within the Community;

- (3) Whereas, as far as excise duties are concerned, harmonisation of structures must, in particular, result in competition in the different categories of manufactured tobacco belonging to the same group not being distorted by the effects of the charging of the tax and, consequently, in the opening of the national markets of the Member States;

...

- (7) Whereas the imperative needs of competition imply a system of freely formed prices for all groups of manufactured tobacco;

3 Under Article 2(1) of that directive:

‘The following shall be considered to be manufactured tobacco:

(a) cigarettes;

(b) cigars and cigarillos;

(c) smoking tobacco:

— fine-cut tobacco for the rolling of cigarettes;

— other smoking tobacco,

as defined in Articles 3 to 7.

4 Article 8 of Directive 95/59 provides:

‘1. Cigarettes manufactured in the Community and those imported from non-member countries shall be subject to a proportional excise duty calculated on the maximum retail selling price, including customs duties, and also to a specific excise duty calculated per unit of the product.

2. The rate of the proportional excise duty and the amount of the specific excise duty must be the same for all cigarettes.

...’

5 Under Article 9(1) of the directive:

‘A natural or legal person established in the Community who converts tobacco into manufactured products prepared for retail sale shall be deemed to be a manufacturer.

Manufacturers, or, where appropriate, their representatives or authorised agents in the Community and importers of tobacco from non-member countries shall be free to determine the maximum retail selling price for each of their products for each Member State for which the products in question are to be released for consumption.

The second paragraph may not, however, hinder implementation of national systems of legislation regarding the control of price levels or the observance of imposed prices, provided that they are compatible with Community legislation.’

6 Article 16 of the directive provides:

‘1. The amount of the specific excise duty on cigarettes shall be established by reference to cigarettes in the most popular price category according to the information available at 1 January each year, beginning 1 January 1978.

2. The specific component of the excise duty may not be less than 5% or more than 55% of the amount of the total tax burden resulting from the aggregation of the proportional excise duty, the specific excise duty and the turnover tax levied on these cigarettes.

...

5. Member States may levy a minimum excise duty on cigarettes sold at a price lower than the retail selling price for cigarettes of the price category most in demand, provided that such excise duty does not exceed the amount of the excise duty levied on cigarettes of the price category most in demand.'

7 Council Directive 92/79/EEC of 19 October 1992 on the approximation of taxes on cigarettes (OJ 1992 L 316, p. 8), as amended by Council Directive 2003/117/EC of 5 December 2003 (OJ 2003 L 333, p. 49), lays down the rates and minimum amounts of the overall excise duty on cigarettes.

8 By Council Decision 2004/513/EC of 2 June 2004 (OJ 2004 L 213, p. 8), the World Health Organisation Framework Convention on Tobacco Control, signed at Geneva on 21 May 2003 ('the WHO Convention'), was approved on behalf of the Community. Article 6 of that Convention, headed 'Price and tax measures to reduce the demand for tobacco,' states:

'1. The Parties recognise that price and tax measures are an effective and important means of reducing tobacco consumption by various segments of the population, in particular young persons.

2. Without prejudice to the sovereign right of the Parties to determine and establish their taxation policies, each Party should take account of its national health objectives concerning tobacco control and adopt or maintain, as appropriate, measures which may include:

- a) implementing tax policies and, where appropriate, price policies, on tobacco products so as to contribute to the health objectives aimed at reducing tobacco consumption, ...

...'

National legislation

- 9 Under section 2(1) of the Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion) Act 1978, No 27/1978, the Minister for Health may make regulations for the control and regulation of advertising of tobacco products, sponsorship and any other activities which are intended or are likely to promote the sales of tobacco products.
- 10 Under section 2(2)(i) of that law, those regulations may provide for 'the prohibition of the sale of tobacco products at prices which are so much lower than those at which tobacco products of a similar type or character are at the material time being sold that the sale at the lower prices constitutes in the opinion of the Minister [for Health] a sales promotion device'.
- 11 The legislation in this field was extended by the Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion) Regulations 1991, S.I. No 326/1991 ('the 1991 regulations') which at the same time revoked the Tobacco Products

(Control of Advertising, Sponsorship and Sales Promotion) (No 2) Regulations 1986, S.I. No 107/1986 ('the 1986 regulations'). Article 16 of the 1991 regulations, which corresponds to Article 18 of the 1986 regulations, provides:

‘1. A person shall not sell by retail a tobacco product of a particular brand at a price lower than that otherwise obtaining for that brand.

2. A person shall not offer to sell by retail a tobacco product of a particular brand at a price lower than otherwise obtaining for that brand by making available to persons a coupon or similar document.

3. A person shall not use, in relation to the retail sale or purchase of tobacco products, offers of vouchers, trading stamps, coupons, premia, tokens or gifts (including gifts of tobacco products).’

¹² Article 17 of the 1991 regulations, which corresponds to Article 19 of the 1986 regulations, provides:

‘1. A person shall not sell by retail a tobacco product at a price as respects which the Minister [for Health], in the exercise of the powers conferred on her by paragraph (i) of sub-section (2) of section 2 of the Act, has formed an opinion that the sale of that product at such a price constitutes a sales promotion device.

2. An opinion formed by th[at] Minister under sub-article (1) of this article shall be communicated in writing to the person concerned.’

- ¹³ In 1986, the Minister for Health issued a Memorandum of Clarification concerning the 1986 regulations. The first sentence of point 2 of the part of that memorandum concerning Article 19 of the 1986 regulations reads as follows:

‘The weighted average price of all cigarettes in each category sold by the [Irish Tobacco Manufacturers Advisory Council] companies will be calculated by reference to the net ex-warehouse sales volumes for each brand for the previous year to the 31st December, and the recommended retail price operative at the time the weighted average price for each category is determined.’

- ¹⁴ According to the first sentence of point 3 of that part of the memorandum, ‘a sales promotion device will occur if the recommended retail price of a brand of cigarettes falls to a price which is more than 3% below the weighted average price for its category.’

Pre-litigation procedure

- ¹⁵ Taking the view that the Irish legislation on the sale of tobacco products was incompatible with Article 9(1) of Directive 95/59, the Commission sent a letter of formal notice to Ireland on 23 October 2001.

- 16 On 27 July 2002, the Commission also sent to Ireland a request for information on the applicable Irish legislation.
- 17 Having found that Ireland's reply of 4 September 2002 to the letter of formal notice did not contain the requested information, the Commission sent Ireland a further request for information on 1 October 2002. It was not answered.
- 18 On 17 October 2003 and 9 July 2004, respectively, the Commission therefore sent a letter of formal notice and a reasoned opinion to Ireland, in which it concluded that, by not providing the requested information, Ireland had failed to fulfil its obligations under Article 10 EC. The reasoned opinion called upon Ireland to adopt the measures necessary to comply with its obligations within a period of two months from receipt of that opinion.
- 19 On 10 December 2004, the Irish Ministry for Health and Children sent Mr Medghoul, Director for Taxation and Customs Union matters in the Commission, a letter in which it gave brief details of recent Irish legislation concerning public health and tobacco products, while pointing out that the legislation was the subject of legal proceedings before the Irish courts and therefore had not yet entered into force. That legislation had still not entered into force upon the expiry of the period prescribed in the reasoned opinion of 15 December 2006, referred to in paragraph 21 of the present judgment.
- 20 At the Commission's request, a meeting took place between it and the Irish authorities on 10 February 2005.

- 21 On 10 April 2006, the Commission sent Ireland a letter of formal notice, and, on 15 December 2006, another reasoned opinion, in which it asserted that, by applying minimum and maximum retail prices for cigarettes, Ireland had failed to fulfil its obligations under Article 9(1) of Directive 95/59. The reasoned opinion called upon Ireland to take the measures required to comply with it within a period of two months from the date of receipt of the opinion.
- 22 Ireland replied to that reasoned opinion by letter of 15 January 2007, contending that the national legislation in question was necessary in order to protect public health.
- 23 The Commission then sent, on 29 June 2007, an additional reasoned opinion. Taking the view, in the light of Ireland's replies to those reasoned opinions, that the situation remained unsatisfactory, the Commission brought the present action.

The action

The complaints alleging infringement of Article 9(1) of Directive 95/59

Arguments of the parties

- 24 On the basis of the information available to it, in particular that contained in the minutes of the meeting of 10 February 2005, the Commission considers that, under the Irish legislation in question and in the light of the practice of the Irish authorities, minimum prices are fixed for the retail sale of cigarettes, in so far as a price of no more than 3% below the weighted average price for cigarettes in the relevant category may

be imposed and maximum prices are fixed, in so far as that weighted average price may not be exceeded by more than 3%. That system restricts the freedom of producers and importers to determine the maximum retail selling prices for their products and is therefore contrary to Article 9(1) of Directive 95/59. Like the other similar national systems which have been examined by the Court, that system prevents the sale of cigarettes at a price lower than that fixed by the Member State concerned. That conclusion is not affected by the third paragraph of Article 9(1) of Directive 95/59.

²⁵ Nor can the system of minimum and maximum prices be justified by the objective of protection of public health laid down in Article 30 EC. As made clear, inter alia, by the judgment in Case C-470/03 *A.G.M.-COS.MET* [2007] ECR I-2749, a matter which has been the subject of harmonisation cannot be examined in the light of provisions of primary law which derogate from the fundamental freedoms.

²⁶ In any event, Member States could ensure that the retail selling prices for tobacco products are sufficiently high in order to combat smoking by means of a general increase in the tax on those products, or by a specific increase, by giving particular weight to the various components of the excise duty or by setting a minimum excise duty. The directives on taxation of cigarettes leave the Member States free to adapt that taxation to their own priorities.

²⁷ The Commission also considers that Article 9(1) of Directive 95/59 is compatible with the WHO Convention. First, that convention does not oblige the Contracting Parties to apply minimum prices. Second, it does not confer on Member States a

right, enforceable against the Community, to choose between the application of tax measures or the application of price measures, since that is a matter for the internal functioning of the Community.

- 28 With regard to Council Recommendation 2003/54/EC of 2 December 2002 on the prevention of smoking and on initiatives to improve tobacco control (OJ 2003 L 22, p. 31), relied on by Ireland in so far as it refers to ‘appropriate price measures on tobacco products so as to discourage tobacco consumption’, the Commission considers that the terms of that recommendation are not binding and that, in any case, they cannot be interpreted as encouraging an infringement of Article 9(1) of Directive 95/59.
- 29 In addition, public health considerations are not completely unrelated to the harmonisation of excise duty on tobacco products.
- 30 Ireland contends that there is no prohibition either in the national legislation in question or the Memorandum of Clarification of 1986 on exceeding by more than 3% the weighted average price for each category of cigarettes. Maximum prices are therefore not imposed. Ireland concedes that the minutes of the meeting of 10 February 2005 do not reflect the real situation in that regard.
- 31 In addition, Ireland argues that Article 9(1) of Directive 95/59, which provides that manufacturers and importers of manufactured tobacco are to be free to determine the maximum retail selling price for their products, does not mention minimum prices and, consequently, does not prohibit the imposition of such minimum prices. The

imposition of a minimum price prevents producers and importers from fixing maximum prices only in a technical and wholly artificial sense. Furthermore, in contrast to other national systems which have been examined by the Court, the Irish system is designed solely to target the sale of cheap cigarettes.

³² Ireland considers that the case-law referred to by the Commission in support of its argument that Article 30 EC cannot be relied upon in the present case, is not capable of being applied here. In Case C-216/98 *Commission v Greece* [2000] ECR I-8921 the Court acknowledged that Article 30 EC, and in particular the objective of the protection of the health and life of humans, can in principle justify the fixing of minimum prices for the retail sale of tobacco products. The Member States enjoy a broad margin of discretion in judging which measures are necessary and proportionate to protect public health. In that regard, the Irish legislation in question satisfies the proportionality test. It stems from a legitimate policy choice between fixing minimum prices and increasing taxation.

³³ Ireland also takes the view that tax measures are not of themselves a sufficient means to achieve the public health goal of preventing the sale of cheap cigarettes. The effect of such measures is uncertain, given that manufacturers may decide to absorb all or some of the increases in excise tax. Also, Ireland cannot combat the sale of cheap cigarettes by imposing a minimum excise duty without introducing a general increase in the tax on all cigarettes, which is already very high in Ireland. Also, an increase in the level of excise duty would increase the risk of smuggling.

³⁴ The proportionality, with regard to that objective, of the Irish system of minimum prices is confirmed by paragraph 7 of Recommendation 2003/54 and by Article 6(2)(a)

of the WHO Convention. In relation to that recommendation, Ireland argues that, while recommendations are not binding measures, they can nevertheless be taken into consideration where they are capable of casting light on the interpretation of Community law. With regard to the WHO Convention, Ireland contends that, while it does not impose an obligation to apply a system of minimum prices, it does require the Contracting Parties to regulate retail selling prices by using tax policies or price policies, whichever is more appropriate. Ireland took the view, in its discretion, that price policies were an appropriate adjunct to its tax policies.

- ³⁵ Ireland submits, finally, that Directive 95/59 is predicated on competition concerns and that it does not take public health considerations into account. In that regard, the Commission has itself recently proposed amendments to that directive (proposal for a directive, COM(2008) 459 Final) intended mainly to reduce tobacco consumption. It has also acknowledged that the existing Community system has not made it possible to prevent significant price differences between the Member States and that those differences have led to smuggling and extensive cross-border trade, causing distortion of competition on the market for tobacco, loss of revenue for Member States applying a relatively high level of taxation, and undermining the attainment of public health objectives.

Findings of the Court

- ³⁶ It must be recalled as a preliminary point that, as recital 3 in the preamble to Directive 95/59 makes clear, the directive is part of a policy of harmonisation of the structures of excise duty on manufactured tobacco, the objective of which is to prevent the distortion of competition between different categories of manufactured tobacco belonging to the same group and, consequently, to open the national markets of the Member States.

- 37 To that end, Article 8(1) of the directive provides that cigarettes manufactured in the Community and those imported from non-member countries are to be subject in each Member State to a proportional excise duty calculated on the maximum retail selling price, including customs duties, and also to a specific excise duty calculated per unit of the product (*Commission v Greece*, paragraph 19).
- 38 It is, furthermore, apparent from recital 7 in the preamble to Directive 95/59 that the imperative needs of competition imply a system of freely formed prices for all groups of manufactured tobacco.
- 39 In that regard, Article 9(1) of Directive 95/59 provides that manufacturers, or, where appropriate, their representatives or authorised agents in the Community and importers of tobacco from non-member countries are to be free to determine the maximum retail selling price for each of their products, the aim being to ensure effective competition between them (*Commission v Greece*, paragraph 20). That provision seeks to ensure that the determination of the tax base of the proportional excise duty on tobacco products, that is the maximum retail selling price of those products, is subject to the same rules in all the Member States. It also aims, as the Advocate General states in point 40 of her Opinion, to maintain the freedom of the abovementioned economic operators, by which they may make effective use of the competitive advantage resulting from any lower cost prices.
- 40 The imposition of a minimum retail selling price by the public authorities thus means that the maximum retail selling price determined by manufacturers and importers cannot, in any event, be lower than that obligatory minimum price. Legislation imposing such a minimum price is therefore capable of undermining competition by preventing some of those producers or importers from taking advantage of lower cost prices so as to offer more attractive retail selling prices.

- 41 Consequently, a system of minimum retail selling prices for tobacco products cannot be regarded as compatible with Article 9(1) of Directive 95/59 unless it is structured in such a way as to ensure, in any event, that the competitive advantage which could result for some producers and importers of those products from lower cost prices is not impaired and, thus, competition is not distorted (see Case C-197/08 *Commission v France* [2010] ECR I-1599, paragraph 38, and Case C-198/08 *Commission v Austria* [2010] ECR I-1645, paragraph 30).
- 42 The national legislation which is the subject of the present action must be examined in the light of those principles.
- 43 That legislation imposes on producers and importers active on the Irish market a minimum retail selling price for cigarettes equal to 97% of the weighted average price on that market for each category of cigarettes.
- 44 By contrast, the Commission has not established that that system imposes on producers and importers a maximum retail selling price for cigarettes.
- 45 It must however be held that that system does not make it possible to ensure, in any event, that the minimum price imposed does not impair the competitive advantage which could result for some producers and importers of tobacco products from lower cost prices. On the contrary, as the Commission pointed out at the hearing, without being contradicted by Ireland, such a system, which furthermore fixes the minimum price by reference to the weighted average price on the market for each category of cigarettes, is likely to eliminate price differences between competing products and to cause prices to converge around the price of the most expensive product. That system therefore undermines the freedom of producers and importers to determine their

maximum retail selling price, guaranteed by the second paragraph of Article 9(1) of Directive 95/59.

- ⁴⁶ With regard to the WHO Convention, as the Advocate General stated in points 50 and 51 of her Opinion, that convention imposes no actual obligation on the Contracting Parties with regard to price policies for tobacco products, and merely describes possible approaches by which to take account of national health objectives concerning tobacco control. Article 6(2) of the convention provides only that the Contracting Parties are to adopt or maintain measures which 'may include' implementing tax policies and, 'where appropriate,' price policies, concerning tobacco products.
- ⁴⁷ Equally, no specific conclusions concerning the recourse to systems of minimum prices can be drawn from Recommendation 2003/54, which, furthermore, is not binding. The section to which Ireland refers merely expresses the idea that high prices for tobacco products discourage tobacco consumption.
- ⁴⁸ In any event, as is clear from paragraph 41 of this judgment, Directive 95/59 does not preclude a pricing policy provided that it does not run counter to the objectives of that directive, in particular that of ensuring that competition between different categories of manufactured tobacco belonging to the same group is not distorted.
- ⁴⁹ Ireland also contends that the system of minimum prices at issue is justified by the objective of protection of health and life of humans under Article 30 EC. According to Ireland, an increase in the level of tax cannot guarantee sufficiently high prices of

tobacco products, because that increase could be absorbed by producers or importers by sacrificing part of their profit margins, or even by selling at a loss.

50 It should be pointed out, in that regard, that Article 30 EC cannot be understood as authorising measures other than the quantitative restrictions on imports and exports and the measures having equivalent effect envisaged by Articles 28 EC and 29 EC (see, to that effect Case C-302/00 *Commission v France* [2002] ECR I-2055, paragraph 33). In the present case, the Commission has not alleged any infringement of Articles 28 EC or 29 EC.

51 The fact remains that Directive 95/59 does not prevent Ireland from taking measures to combat smoking, which forms part of the objective of protecting public health.

52 Equally, it cannot be maintained that that objective is not taken into account by the directive.

53 As noted in recital 7 in the preamble to Directive 2002/10, which was the last directive to amend Directive 95/59 but which left Article 9 unchanged, the EC Treaty, and in particular the first paragraph of Article 152(1) EC, requires a high level of human health protection in the definition and implementation of all Community policies and activities.

54 That recital also explains that the level of taxation is a major factor in the price of tobacco products, which in turn influences consumers' smoking habits. Equally,

the Court has already held that fiscal legislation is an important and effective instrument for discouraging consumption of tobacco products and, therefore, for the protection of public health (Case C-140/05 *Valeško* [2006] ECR I-10025, paragraph 58), and that the objective of ensuring that a high price level is fixed for those products may adequately be attained by increased taxation of those products, the excise duty increases sooner or later being reflected in an increase in the retail selling price, without undermining the freedom to determine prices (see, to that effect, *Commission v Greece*, paragraph 31).

55 Moreover, if the Member States wish to exclude once and for all any possibility for producers or importers to absorb, even temporarily, the impact of taxes on the retail selling price of manufactured tobacco products by selling them at a loss, it is *inter alia* open to them, while allowing those producers and importers to make effective use of the competitive advantage resulting from any lower cost prices, to prohibit the sale of manufactured tobacco products at a price below the sum of the cost price and all taxes (see Case C-197/08 *Commission v France*, paragraph 53, and *Commission v Austria*, paragraph 43).

56 It follows from all the foregoing considerations that the Commission's action must be upheld in so far as concerns the complaint relating to the imposition, in Ireland, of minimum retail prices for cigarettes, but rejected in so far as concerns the complaint relating to the imposition, in Ireland, of maximum retail prices for cigarettes.

57 It must, therefore, be held that, by imposing minimum retail prices for cigarettes, Ireland has failed to fulfil its obligations under Article 9(1) of Directive 95/59.

Complaint alleging the infringement of Article 10 EC

Arguments of the parties

58 According to the Commission, the Member States have the duty, under Article 10 EC, to facilitate the achievement of its tasks, in particular by complying with requests for information made in the course of infringement procedures. Thus, by not providing information on the applicable Irish legislation despite the Commission's requests of 27 July and 1 October 2002, Ireland has failed to fulfil its obligations under Article 10 EC. Ireland's reply of 4 September 2002 to the letter of formal notice of 23 October 2001 did not contain the requested information. In addition, Ireland failed to reply either to the letter of formal notice of 17 October 2003 or to the reasoned opinion of 9 July 2004. Finally, Ireland's letter of 10 December 2004 did not comply with its co-operation obligations, since the letter was sent more than two years after the requests for information addressed to it.

59 Ireland contends that on 30 May 2002 the Minister for Health and Children sent to Mr Medghoul a copy of the documents referred to in the Commission's request for information. On 4 September 2002, Ireland replied both to the letter of formal notice of 23 October 2001 and to the Commission's request for information. Finally, by letter of 10 December 2004, the Irish authorities described the national legislation which had recently been adopted. The Commission was therefore perfectly aware of the Irish legislation. Consequently, Ireland disputes any infringement of its obligations under Article 10 EC.

Findings of the Court

- 60 Article 10 EC makes it clear that the Member States are required to cooperate in good faith with the enquiries of the Commission pursuant to Article 226 EC, and to provide the Commission with all the information requested for that purpose (see Case C-82/03 *Commission v Italy* [2004] ECR I-6635, paragraph 15 and case-law cited).
- 61 On expiry of the period laid down in the reasoned opinion of 9 July 2004, which referred to a failure to comply with Article 10 EC, Ireland had still not provided the information requested, even though it had been called upon to do so several times. It is apparent from the documents before the Court that, only in the letter of 10 December 2004 did the Irish authorities briefly describe the national legislation concerning public health and tobacco, in its latest version.
- 62 Consequently, it must be held that, by not providing the information required by the Commission in order to enable it to fulfil its task of monitoring compliance with Directive 95/59, Ireland has failed to fulfil its obligations under Article 10 EC.

Costs

- 63 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Under Article 69(3) of those rules, where each party succeeds on some and fails on other heads, the Court may order that the costs be shared or that the parties bear their own costs. However, even though the action is dismissed in part, it must be held that the Commission's action is, in essence, well founded. In those circumstances, Ireland should be ordered to pay the costs, as applied for in the Commission's pleadings.

On those grounds, the Court (Third Chamber) hereby:

- 1. Declares that, by imposing minimum retail prices for cigarettes, Ireland has failed to fulfil its obligations under Article 9(1) of Council Directive 95/59/EC of 27 November 1995 on taxes other than turnover taxes which affect the consumption of manufactured tobacco, as amended by Council Directive 2002/10/EC of 12 February 2002;**

- 2. Declares that, by not providing the information required by the European Commission in order to enable it to fulfil its task of monitoring compliance with Directive 95/59, as amended by Directive 2002/10, Ireland has failed to fulfil its obligations under Article 10 EC;**

- 3. Dismisses the action as to the remainder;**

- 4. Orders Ireland to pay the costs.**

[Signatures]